

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**JOHN H. BENGE, JR.,**  
*PETITIONER*

v.

**NO. 05-0550 (GMS)**

**RICK KEARNEY, WARDEN  
SUSSEX CORRECTIONAL  
INSTITUTION; AND CARL  
C. DANBERG, ATTORNEY  
GENERAL OF THE STATE  
OF DELAWARE**  
*RESPONDENTS*

**MOTION FOR A DETERMINATION UNDER  
*HABEAS CORPUS* RULE 8(a) AND FOR  
SUMMARY JUDGMENT UNDER RULE 56(A)  
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

FILED  
CLERK U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
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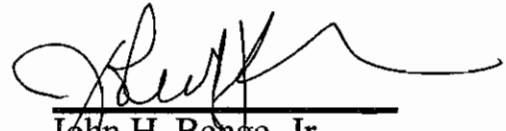
COMES NOW, John H. Benge, Jr., petitioner *pro se* above-named  
("Petitioner") and pursuant to Habeas Corpus Rule 8(a) and FRCP Rule  
56(a) moves as follows:

1. For a determination under Habeas Corpus Rule 8(a) that no evidentiary hearing is warranted upon review of the petition, answer of respondents, transcript and record of state court proceedings, and the additional materials submitted by the parties under Habeas Corpus Rules 5 and 7.

2. For summary judgment under FRCP Rule 56(a) for Petitioner on each of the claims set forth in the *habeas corpus* petition filed in the above-captioned case.

The grounds for this motion are that there is no genuine issue as to any fact material to Petitioner's claims for *habeas corpus* relief under 28 U.S.C. §2254 and that Petitioner is entitled to relief as a matter of law.

Date: January 26, 2006

  
\_\_\_\_\_  
John H. Bengé, Jr.  
P. O. Box 500  
Georgetown, DE 19947

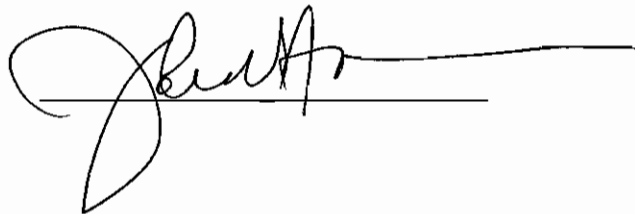
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that two copies of the attached motion were served on January 26, 2006 by depositing the same in the prisoner mail dropbox at Sussex Correctional Institution, Georgetown, Delaware, first class mail, postage prepaid, and addressed to:

Thomas E. Brown, Esq.  
Deputy Attorney General  
Department of Justice  
820 North French Street  
Wilmington, DE 19801

I hereby certify under penalty of the laws of the United States of America that the foregoing is true and correct.

Executed on January 26, 2006

A handwritten signature in black ink, appearing to read "T. E. Brown", is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.